

II. Remarks

A. Status of Claims

Upon entry of this amendment, Claims 1-24, 63 and 64 will be pending in the subject application. By this amendment, Claims 1 and 5 have been amended and Claims 63 and 64 have been added. Support for the amended and new claims may be found at paragraphs [0054]-[0064], in FIGS. 1 and 2 and the corresponding text, and elsewhere in the subject application. No new matter has been added.

Claims 1 and 5 have been amended to recite the language agreed to during the interview.

B. November 20, 2008 Examiner Interview

Applicants would like to thank Examiner Alexander for the personal interview conducted on November 20, 2008. In compliance with M.P.E.P. § 713.04, the substance of that interview is reflected in the November 20, 2008 Interview Summary and in the following remarks.

During the interview, Applicants' representative asserted that Zelin and Davis each fail to teach or suggest a sealing element that slides in a way that (1) displaces any excess fluid sample away from the orifice, (2) seals the fluid sample within said holding chamber, and (3) inhibits the fluid sample from prematurely breaking through the internal capillary stop. No agreement was reached on these points. The Office did agree that if Applicant were to amend the claims to indicate the sealing element is slid over the orifice prior to insertion into the device, and the amended claims would be patentable over the cited references subject to further search and consideration.

C. Rejections Under 35 U.S.C. § 102(b)

1. Zelin Fails to Teach a Sealing Element that Slides Over the Orifice and Thus Fails to Teach Every Element of Claims 1 and 5.

Claims 1-6, 8-10, 13, 14 and 16-24 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,821,399 to Zelin ("Zelin"). Applicants respectfully traverse these rejections, particularly in view of amended Claims 1 and 5.

Claim 1 as amended recites a method of sealing a fluid sample collection device comprising "slidably moving a sealing element over the orifice prior to insertion into a reader

and over at least a portion of said substantially planar surface in a way that [1] displaces any excess fluid sample away from the orifice, [2] seals the fluid sample within said holding chamber, and [3] inhibits the fluid sample from prematurely breaking through the internal capillary stop.” Independent Claim 5 recites similar features. As agreed to during the interview, Zelin fails to teach slidably moving a sealing element over the orifice prior to insertion into a reader as claimed. Accordingly, independent Claims 1 and 5 are patentable over Zelin, and the allowance thereof is respectfully requested.

The Office Action cites Zelin for allegedly teaching that the “insertion of the device (10) into the reader (150) performs the claimed feature of ‘... [1] displaces any excess fluid sample away from the orifice, [2] seals the fluid sample within the holding chamber...’.” (See Office Action, pages 2-3). Applicants strongly disagree with this interpretation of Zelin.

As discussed in the Examiner Interview, nowhere does Zelin teach a sealing element that (1) displaces fluid, (2) seals the fluid sample in a holding chamber and (3) inhibits the fluid sample from prematurely breaking through a capillary stop. Indeed, the sample entry orifice of Zelin remains *external* to the reader of Zelin during the insertion process, and the act of inserting the Zelin device into a reader simply would have no impact on *any one of* displacing excess fluid, sealing fluid sample, or inhibiting the sample from prematurely breaking through a capillary stop. The Office’s position that the insertion of the Zelin device performs any one of these functions—let alone all three—simply has no basis in the Zelin patent. For these reasons, the rejection based on Zelin is improper and should be withdrawn, and the allowance thereof is respectfully requested.

2. Davis Fails to Teach a Sealing Element that Slides Over the Orifice and Thus Fails to Teach Every Element of Claims 1 and 5.

Claims 1-24 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 7,419,821 to Davis et al. (“Davis”). Applicants respectfully traverse these rejections in view of amended Claims 1 and 5.

The features of independent Claims 1 and 5 related to the sealing element are referenced from above. First, as agreed to during the interview, Davis fails to teach slidably moving a

sealing element over the orifice prior to insertion into a reader as claimed. Accordingly, independent Claims 1 and 5 are patentable over Davis, and the allowance thereof is respectfully requested.

Second, the Office Action alleges that Davis teaches “the same structure as presently claimed.” During the Interview, Applicants requested clarification of this rejection, and the Office alleged that Davis discloses no more than what Zelin is alleged to teach. Applicants strongly disagree that Davis teaches the same structure as claimed in Claims 1 and 5. Davis does not, for example, mention a sealing element that *slides* as claimed and instead shows a lid having a flexible hinge in FIG. 1. There simply is no teaching in Davis to support the Office Action’s statement that Davis teaches “the same structure as presently claimed.” Therefore, for at least this additional reason, Davis fails to teach every element of independent Claims 1 and 5 or the claims depending therefrom, and the allowance thereof is respectfully requested.

3. Dependent Claims

Dependent claims 7, 11, 12 and 15 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Zelin for the reasons set forth in the Office Action. These claims depend variously from independent Claims 1 and 5, respectively. Accordingly, Claims 7, 11, 12 and 15 incorporate the features of independent Claim 1 or Claim 5 and are patentable over the cited references for at least the same reasons as independent Claims 1 and 5.

D. Conclusion

For the foregoing reasons, the allowance of pending Claims 1-24, 63 and 64 is respectfully requested. Should the Examiner have any questions regarding this response or the application in general, the Examiner is urged to contact the Applicants’ attorney, Justin L. Krieger, by telephone at (202) 625-3858.

All correspondence should continue to be directed to the address given below.

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